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JUL 27 2005

**OFFICE OF PETITIONS**

In re Application of :  
Victor Bronshtein :  
Application No. 09/254,563 :  
Filed: March 5, 1999 :  
Attorney Docket Number: UPTINC.015A :  
Title: SHELF PRESERVATION OF CELLS, :  
TISSUES, ORGANS AND ORGANISMS BY :  
VITRIFICATION :

DECISION ON RENEWED PETITION  
UNDER 37 C.F.R. §1.137(b)

This is a decision on the renewed petition filed May 9, 2005, pursuant to 37 C.F.R. §1.137(b)<sup>1</sup>, to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed April 9, 2002, which set a shortened statutory period for reply of three (3) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on July 10, 2002. A Notice of Abandonment was mailed November 18, 2002.

The original petition was submitted on October 12, 2004, and was dismissed via the mailing of a decision on April 21, 2005, which indicated that Petitioner has not submitted the petition fee in full (Petitioner has submitted \$670 when \$750 was due).

With this renewed petition, Petitioner has submitted an additional \$15.

<sup>1</sup> A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

**Petition fee requirement**

The fee for filing a petition to revive an unintentionally abandoned application under 37 C.F.R. § 1.137(b) is set forth in 37 C.F.R. § 1.17(m) as being \$1500 for a large entity and \$750 for a small entity. Petitioner included \$670 with the original petition, and an additional \$15 with this renewed petition. As such, an additional \$65 will be required to submit the petition fee in full. Therefore, requirement number (2) has not been met.

The payment of the required petition fee in full is a prerequisite to the filing of a petition to revive under 37 C.F.R. § 1.137. Therefore, consideration of the merits of the petition before receipt of the filing fee would be premature. See M.P.E.P. 711.03(c)(III)(B)<sup>2</sup>

In view of the foregoing, this petition is **DISMISSED**.

Any reply must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. § 1.136(a) are permitted. The reply should include a cover letter entitled "Second Renewed Petition Under 37 C.F.R. 1.137(b)". This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski. Any renewed petition may be submitted by mail<sup>3</sup>, hand-delivery<sup>4</sup>, or facsimile<sup>5</sup>.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



**Paul Shanoski**  
Senior Attorney  
Office of Petitions  
United States Patent and Trademark Office

<sup>2</sup> "...[T]he payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application and cannot be waived. In addition, the phrase '[o]n filing' in 35 U.S.C. § 41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 C.F.R. § 1.137. See H.R. Rep. No. 542, 97th Cong., 2nd Sess. 6 (1982), *reprinted in* 1982 U.S.C.C.A.N. 770 ('[t]he fees set forth in this section are due on filing the petition'). Therefore, the Office...will not reach the merits of any petition under 37 C.F.R. § 1.137 lacking the requisite petition fee."

<sup>3</sup> Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

<sup>4</sup> Customer Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

<sup>5</sup> (703) 872-9306 - please note this is a central facsimile number. On July 15, 2005, the Central FAX Number changed to 571-273-8300. To give customers time to adjust to the new Central FAX Number, faxes sent to the old number (703-872-9306) will be routed to the new number until September 15, 2005.